Item no. 1008-D X 96-2: H. Rp. 1238/pt. 1

96TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPT. 96-1238, Part 1

SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT OF 1980

AUGUST 20, 1980.—Ordered to be printed

Mr. SMITH of Iowa, from the Committee on Small Business, submitted the following

REPORT

together with

SUPPLEMENTARY VIEWS

COMPLETED ORIGINAL

[To accompany H.R. 6722 which on March 6, 1980, was referred jointly to the Committee on Small Business and the Committee on Interstate and Foreign Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 6722) to amend the Small Business Act to provide special loan guarantees to small business concerns for the acquisition of motor fuel service stations, to require the divorcement of such stations from operation by certain producers and refiners of motor fuels, to control sales by producers and refiners of motor fuels, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Motor Fuel Marketer Preservation Act of 1980".

FINANCIAL ASSISTANCE TO SMALL BUSINESS CONCERNS ACQUIRING MOTOR FUEL SERVICE STATIONS

SEC. 2. (a) Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by inserting after the first sentence the following new sentence: "Notwithstanding the proviso in the preceding sentence, the Administration may participate on a deferred basis in any loan under this section to any dealer acquiring a motor fuel service station without regard to whether such loan is primarily for the acquisition of land.".

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(33)

(b) Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end thereof the following new subsection:

"(d) For purposes of section 7(a), the terms 'motor fuel service station' and 'dealer' have the meanings set forth in paragraphs (8) and (10)(B), respectively, of section 3(f) of the Small Business Motor Fuel Marketer Preservation Act of 1980.".

DIVORCEMENT OF MOTOR FUEL SERVICE STATIONS; LIMITATION ON RETAIL SALES OF MOTOR FUEL BY REFINERS

SEC. 3. (a)(1) Notwithstanding any other provision of law, it shall be unlawful for any refiner, other than an independent refiner or a small refiner, to operate any motor fuel service station in the United States.

(2)(A) Any interest in any motor fuel service station may be disposed of by a refiner to any person other than the dealer at such station only if such dealer was offered a right of first refusal of an offer made by the refiner to sell such interest.

(B) For purposes of subparagraph (A), a dealer at a motor fuel service station is considered to be offered a right of first refusal of an offer made by the refiner to sell an interest in the station only if—

(i) the refiner gives the dealer, in writing, an exclusive 60-day option to accept an offer to sell such interest, and

(ii) in any case in which, during such 60-day period, the dealer makes a counter-offer, in writing, to purchase such interest at a different price, the refiner, during the 30-day period following the date of the counter-offer—

(I) agrees, in writing, to the counter-offer, or

(II) submits to the dealer, in writing, a revised offer to sell the interest to the dealer at a price to be determined by an independent appraisal meeting the standards prescribed by the Small Business Administration pursuant to subparagraph (C) and undertakes such an appraisal within such time and in such manner as shall be prescribed by the Administration by regulation.

The cost of such appraisal shall be borne equally by the refiner and the dealer.

(C) The Small Business Administration shall prescribe by regulation standards which must be met with respect to an appraisal in order for such appraisal to be considered an independent appraisal for purposes of this paragraph.

(b)(1) Notwithstanding any other provision of law, it shall be unlawful for any refiner to sell at motor fuel service stations operated by that refiner in the United States during any applicable calendar year, an amount of motor fuel greater than—

(A) the amount of motor fuel sold by that refiner at motor fuel service stations in the United States during calendar year 1978, plus

(B) the amount of motor fuel which is 50 percent of the excess of the motor fuel manufactured by the refiner during that applicable calendar year, over the amount of motor fuel sold at motor fuel service stations by that refiner in the United States during calendar year 1978, plus

(C) the amount of motor fuel purchased by that refiner from others during that applicable calendar year.

(2) For purposes of this subsection, the term "applicable calendar year" means a calendar year ending after the effective date of this subsection.

(c)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), it shall be unlawful for any refiner to sell any motor fuel at any time at any point of transfer at differing prices to purchasers of the same bas · units of such motor fuel, except that nothing in this paragraph shall be construed to prevent differentials in prices of any motor fuel which make only due allowance for differences in the cost of manufacture, sale, or delivery of such motor fuel resulting from the differing methods or quantities in which such motor fuel is sold or delivered. A refiner shall be considered to have violated the provisions of this paragraph in any case in which the refiner withholds some of the refiner's available motor fuel from any sale, at a point of transfer of the motor fuel from the refiner to purchasers of the motor fuel, and subsequently sells such motor fuel at motor fuel service stations operated by the refiner at prices below the prices at which, if the refiner had purchased the motor fuel at the point of transfer at the price then in effect, the refiner would have had to

sell such motor fuel at such stations in order to obtain the same profits on the sale.

(2) Nothing in paragraph (1) shall be construed to prevent a refiner from charging a uniform and reasonable surcharge in connection with sales of motor fuel to persons as consideration for the use by such persons of a trademark, trade name, service mark, or other identifying symbol or name and any services associated with such use.

(d)(1)(A) Notwithstanding any other provision of law, it shall be unlawful for any person to restrain, interfere with, or in any way prevent the purchasing from another, the storing, or the selling of motor fuel by any dealer.

(B) Subparagraph (A) shall not apply with respect to any provision of any contract or agreement to the extent that the provision requires the purchasing of any motor fuel by any dealer exclusively from any refiner or distributor, but only if such provision provides that such dealer may purchase such motor fuel from any other person if such motor fuel is not readily available from such refiner or distributor.

(2) Notwithstanding any other provision of law, it shall be unlawful for any dealer, at a motor fuel service station displaying a trademark, trade name, service mark, or other identifying symbol or name owned by a refiner, to sell motor fuel which is not provided by such refiner without providing reasonable notice at the point of sale to each purchaser of such motor fuel that such motor fuel is not refined by such refiner.

(e)(1) Not later than 90 days after the date of the enactment of this Act, and annually thereafter, each refiner shall provide in writing to the Federal Trade Commission—

(A) the number of gallons of motor fuel sold at motor fuel service stations operated by the refiner during the preceding calendar year by the refiner in the United States,

(B) the number of gallons of motor fuel manufactured during the preceding calendar year by the refiner in the United States,

(C) the number of barrels of crude oil produced during the preceeding calendar year by the refiner, and

(D) the number of barrels of crude oil refined during the preceding calendar year by the refiner.

(2) Not later than 90 days after the date of the enactment of this Act each refiner shall provide in writing to the Federal Trade Commission the information described in paragraph (1) with respect to calendar year 1978.

(3) The Federal Trade Commission shall not require from any person information referred to in the preceding provisions of this subsection to the extent that the Commission is able to obtain such information from agencies or departments of the United States.

(f) For purposes of this section:

(1)(A) The term "producer" means any person who is engaged in the production of crude oil or who owns crude oil when it is produced.

(B) Such term includes any related person with respect to such person.

(2)(A) The term "refiner" means—

(i) any person engaged in the refining of motor fuel, and

(ii) any producer for whom refining of crude oil produced by such producer, or owned by such producer when such crude oil is produced, is performed under contract.

(B) Such term includes, when used in connection with any person described in clause (i) or (ii) of subparagraph (A), any related person with respect to such person.

(3) The term "independent refiner" means a refiner who obtained, directly or indirectly, in calendar year 1978, more than 70 percent of the refiner's refinery input of domestic and imported crude oil from producers who are not related persons referred to in paragraph (2)(B).

(4) The term "small refiner" means a refiner whose total refinery capacity does not exceed 175,000 barrels per day.

(5) The term "related person" means, with respect to any other person—

(A) a person who holds a significant ownership interest in such other person;

(B) a person in whom such other person holds a significant ownership interest; and

(C) a person in whom a third person holds a significant ownership interest while holding a significant ownership interest in such other person.

(6) The term "significant ownership interest" means—

(A) with respect to any corporation, the single largest share in value of the outstanding stock of such corporation,

(B) with respect to a partnership, the single largest share in the profits or capital of such partnership, and

(C) with respect to an estate or trust, the single largest share of the beneficial interests in such estate or trust.

For purposes of determining significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(7) The term "motor fuel" means gasoline, diesel fuel, alcohol, and any mixture of any of the foregoing, suitable for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(8) The term "motor fuel service station" means any facility at which motor fuel is sold at retail.

(9) The term "sell at retail" means to sell to the general public for ultimate consumption.

(10)(A) Except as provided in subparagraph (B), the term "dealer" means a person who occupies as a retailer a motor fuel service station.

(B)(i) When used in subsection (d)(2), the term "dealer" means, with respect to a refiner, a person described in subparagraph (A) who occupies the motor fuel service station under lease or rental agreement with the refiner.

(ii) Notwithstanding clause (i), a person described in such subparagraph shall not be considered a dealer if the lease or rental agreement is with a refiner in connection with whom such person is a related person referred to in paragraph (2)(B).

(11) The term "operate" means, when used in connection with a motor fuel service station, to engage at such station in the business of selling motor fuel at retail through any—

(A) employee,

(B) commissioned agent,

(C) person operating such station pursuant to a contract with a refiner, or

(D) person acting on behalf of the refiner or under the refiner's supervision, whose duties include the sale of such motor fuel.

(12) The term "basic unit" means, in connection with motor fuel—

(A) a dealer tankwagon or transport load;

(B) a railroad tank car load;

(C) a barge load; and

(D) a pipeline tender.

(13) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, joint-stock companies, trustees and receivers in bankruptcy and reorganization, common-law trusts, and any organized group, whether or not incorporated.

(14) The term "United States" means, when used in a geographic sense, the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(g)(1) Any person who violates any provision of subsection (a)(1) shall, upon conviction, be punished by a fine of not to exceed $50,000 per month for each motor fuel service station operated during such month in violation of such subsection.

(2) Any person who violates any provision of subsection (a)(2) shall, upon conviction, be punished by a fine not to exceed $50,000 for each such violation.

(3) Any person who violates any provision of subsection (b) shall, upon conviction, be punished by a fine not to exceed $25,000 for each 25,000 gallons of motor fuel sold in excess of the amount permitted under such subsection.

(4) Any person who sells motor fuel in violation of subsection (c) shall, upon conviction, be punished by a fine not to exceed $10,000 for each such sale.

(5) Any person who violates any provision of subsection (d)(1) shall, upon conviction, be punished by a fine not to exceed $50,000 for each such violation.

(6) Any person who violates any provision of subsection (d)(2) shall, upon conviction, be punished by a fine not to exceed $10,000 for each such violation.

(7) It shall be the duty of the Federal Trade Commission to commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person violates any provision of subsection (a), (b), (c), or (d). Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

(h)(1) If any person fails to comply with the requirements of this section, any other person directly affected by such failure may maintain a civil action against such person failing to comply with such requirements for damages and appropriate equitable relief, including temporary and permanent injunctive relief. If the plaintiff prevails in any action under this section, the plaintiff shall be entitled to reasonable attorney and expert witness fees to be paid by the defendant, except that in any case in which the court determines that only nominal damages are to be awarded to the plaintiff, the court may, in, its discretion, determine not to direct that such fees be paid by the defendant.

(2) Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such person is located or in which such person is doing business.

(i)(1) Subsections (a)(1), (b), (c), and (d) of this section shall take effect 1 year after the date of the enactment of this Act.

(2) The Commission shall prescribe the initial regulations required by the provisions of this section before the end of the 180-day period beginning on the date of the enactment of this Act.

The Purpose of the Bill

The purpose of the bill (H.R. 6722) is to promote the viability of small businesses engaged in the marketing of motor fuel by eliminating inequitable practices and competition from their suppliers and major refiners.

The purpose of Section 2 of the bill is to assure that service station dealers seeking Small Business Administration financial assistance to purchase gas stations have access to SBA loan guarantees, regardless of whether or not the chief cost involved is the value of the real estate at the location to be acquired.

The purpose of Section 3(a) of the bill is to assure fair and equal competition in the retail marketing of motor fuel by barring the major, integrated refiners from the direct operation of retail outlets. They would be allowed to continue to own service stations, but would have to operate them through lessee dealers or other independent marketers.

It also would protect the interests of a dealer who has leased a service station, by specifying the dealer's right of first refusal to purchase the service station he or she has been leasing if it is to be sold by a refiner.

The purpose of Section 3(b) is to create more equitable and competitive environment in the gasoline retail market by placing certain restrictions on direct retail marketing by small and independent refiners who otherwise would enjoy certain unfair advantages in the marketplace.

The purpose of Section 3(c) of the bill is to assure all marketers the ability to compete on equal terms by requiring that each refiner sell

motor fuel products on equal terms to its wholesale customers who are purchasing similar quantities of product at similar times and places. Those refiners who are permitted to operate their own retail outlets are required to transfer motor fuel to those outlets at a price comparable to that charged its other wholesale customers.

Section 3(d) helps assure the independence and viability of the service station dealer by assuring the dealer's right to purchase motor fuel products from other sources when the dealer's usual supplier is not able to provide the product sought. A further purpose of this provision is to facilitate entry into the market by entrepreneurs producing gasohol and other new motor fuel products.

The purpose of Section 3(e) of the bill is to obtain such information as is necessary for the enforcement of key provisions of the legislation.

Section 3(g) and (h) provides penalty and enforcement provisions appropriate to the bill.

Introduction and Background

H.R. 6722, introduced on March 6, 1980, a bill of three sections, is designed to assure small and independent marketers of motor fuel products an opportunity to compete in the gasoline retail market place on fair and equal terms.

Your Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business held extensive hearings on gasoline retail marketing practices in the summer and fall of 1979. In order to make the hearings accessible to small business operators, field hearings were held in Sioux City, Iowa, St. Louis, Mo., and Dayton, Ohio. Also, a series of hearings was held in Washington, D.C. Over one hundred witnesses were heard, and the hearing record fills three volumes.

From those hearings a concensus emerged that independent service station dealers are forced to operate in an environment in which they cannot compete on equal terms with some of those who are challenging them in the same marketplace. The Antitrust Subcommittee held several informal meetings to discuss what legislation is needed to correct this situation.

The Small Business Motor Fuel Marketer Preservation Act, H.R. 6722, was introduced by a bipartisan majority of the Subcommittee members, who were joined by the chairman of the full committee. Similar bills, H.R. 6849 and H.R. 7014 also were introduced. All of the bills were referred jointly to the Small Business Committee and the Interstate and Foreign Commerce Committee.

Hearings on his legislation were conducted jointly by the Small Business Subcommittee on Antitrust and by the Interstate and Foreign Commerce Subcommittee on Consumer Protection and Finance. Witnesses representing all elements of the petroleum industry were heard, as were representatives of several state and federal agencies. In addition, many written statements were submitted for the record.

Independently, the Small Business Committee's Subcommittee on Energy, Environment, Safety and Research, conducted its own study of "Petroleum Products: Supply, Price and Marketing Problems". On

June 3, your Committee issued its report, without dissent, recommending enactment of legislation which would "prevent refiners from directly competing with the small business retailers they supply by prohibiting them from directly operating gasoline outlets or engaging in the direct retail marketing of gasoline. . ."

Your Committee met at its regularly scheduled meeting on July 1, and considered the bill H.R. 6722, as amended. After adoption of an amendment, the Committee ordered the bill favorably reported by a vote of 25–1.

The Need for the Legislation

In recent years there has been a sharp decline in the number of small and independent businesses engaged in the retail sale of motor fuel products. Concurrently, there has been a significant growth in direct retail marketing operations of petroleum refining companies. These two trends are of great concern to the Small Business Committee and prompted the Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business to hold a series of eight hearings in 1979, examining the subject of gasoline retail marketing practices.

Using data obtained from the Department of Energy, staff reports prepared for the Subcommittee show that there was a net loss of more than 80,000 service station dealers between January 1972 and January 1979, inclusive. This amounts to more than one-third of all independently-run service stations.

During the same period, from 1972 to 1979, the total volume of gasoline sold in service stations directly operated by refiners more than doubled. Further, in 1972 the average volume of gasoline sold each month in a refiner-run station was 1.9 times as large as the average monthly salesof a dealer-run station; and the ratio had grown to 2.5 to 1 by 1979.

While the Subcommittee heard considerable discussion as to the precise numbers involved, there was general agreement among all witnesses that the trends described in the staff reports are accurate. Witnesses at all three field hearings remarked that the trend data applied to their local situations, as well as nationally. More recent data and news reports indicate that the trends have continued to the present time.

Structure of the Industry

Historically, motor fuel has been sold in the United States through networks of independent businesses. Local service stations were operated by dealers who either owned the property and structures (open dealers) or by those who leased the facilities (lessee dealers).

Most dealers lease their stations from refiners.

A station can be either branded or unbranded. The branded station displays the trade name and trademarks of a particular refiner and generally sells only those products supplied by that refiner. The unbranded station does not display any refiner's emblems. The vast majority of the independent dealers, both open and lessee, are branded.

Refiners charge more for gasoline that is to be sold under a tradename than would be charged for unbranded product. The rationale for this is that the extra charge compensates the refiner for the cost of

advertising, maintenance of a national credit card system, dealer counseling, and so forth.

Stations receive their supplies of motor fuel either directly from the refiner or through a middleman. This middleman can be either a jobber, who is an independent business operator and who serves as the wholesaler/distributor, or a commmission agent, who operates on behalf of a refiner.

Increasingly, refiners have been withdrawing from direct distribution of product to independent retailers. Several major refiners recently converted their commission agents to jobbers.

Refined petroleum products are distributed by refiners either at the refinery or at terminal points along pipelines and at waterfront facilities. Sale of product in wholesale quantities occurs "at the rack", a phrase which refers to the way in which the product is loaded for transportation away from the terminal or storage facility.

Prices at the rack vary according to the classification of the individual customer. Jobbers, for instance, are given a discount of several cents per gallon by most refiners. The explanation given is that the jobber performs various services for the refiner, including transportation, bulk storage, various credit-related functions, and dealer counseling.

Dealer networks and wholesale distribution networks are most typical of major, integrated refiners. These are the very large oil companies that have significant crude oil holdings as well as substantial refining capacity and distribution networks. Currently, these companies engage in all aspects of the petroleum business, from the time the crude oil is extracted from the ground, through transportation and refining, to the time it reaches the end consumer of motor fuel products.

According to information obtained from the Department of Energy, in 1978 there were 16 oil companies operating in the United States which each have crude oil production equal to 30 percent or more of their refinery needs and which have refinery capacity greater than 175,000 barrels per day. This is the criterion used in the Emergency Petroleum Allocation Act for distinguishing major integrated oil companies.

At the other end of the scale, there are small and independent refiners. The small refiners tend to produce specialty products or to serve very localized markets. Independent refiners—those who do not have significant crude oil reserves—must obtain the crude oil they need to run their refineries from the major oil companies, with whom they compete, or else from increasingly unreliable and high-priced sources overseas and on the domestic spot market.

Independent refiners sometimes are large enough to be an appreciable factor in a given regional market; and some do have their own distribution networks, but none is nationwide. Frequently, the independent refiner supplies the unbranded independent dealers.

For many years, medium-sized refiners have maintained their own network of service stations directly operated by company personnel. This is in part an historical accident, because several of the independent refiners merged with or were acquired by existing chains of retail outlets. And it is in part due to the independent refiners' need to main-

tain assured outlets for their products, since they frequently are excluded from selling to the major brand stations which occupy a very substantial portion of the market. Because the independent refiners do not have any crude oil operations from which to draw profits, they have always been very aggressive competitors in the downstream, retail market.

Changes in the Retail Marketplace

A number of changes have occurred in the retail gasoline market in recent years. Most noticeably, the price of the product has risen dramatically. Consumers now tend to purchase automobiles that require less maintenance and use less gasoline; and they have begun to shop for gasoline on the basis of price.

There has been a major increase in the amount of gasoline sold through gas-and-go type stations. These are high volume stations that offer no services and usually do not operate under a major refiner brand name. The price of gasoline at these stations is lower than it is at traditional service stations that sell comparatively smaller volumes of gasoline (usually branded) and offer mechanical services.

The Small Business Committee is concerned that independent dealers seem to have been effectively excluded from the opportunity to meet this change in the marketplace. Instead, we see some of their suppliers, the refiners and distributors, moving in to compete against them at the retail level, while dealers are precluded from responding to the challenge.

The Committee's Concerns

Your Committee believes that competition is a vital and beneficial element in any marketplace. However, it recognizes the need for competitors to start out on a somewhat equal footing. Otherwise, there is no meaning to the word competition.

Your Committee does not believe it is possible to have fair competition between a refiner and its own dealers. This concern arises from the fact that the refiner often is in a position to control the most important elements of its would-be competitor's ability to do business.

Representative Berkley Bedell, chairman of your Small Business Subcommittee on Antitrust, summed up this concern in his opening remarks at the first day of hearings on H.R. 6722. Referring back to the hearings his panel had conducted in 1979, he said:

> We heard testimony from the marketing vice president of one major oil company who testified that they viewed their company-operated outlets as being in direct competition with the dealer network they had developed earlier. Many of us on the Subcommittee were dumbfounded by the notion of a major refiner "competing" with dealers whose rent they controlled, whose product supply and price they controlled, whose credit terms and advertising they controlled, and so forth. This did not conform with our notion of fair competition.

Indeed, the Subcommittee heard testimony indicating that some dealers have been faced with rent increases of as much as 1200 percent on renewal of their three-year leases. The average rent increase on re-

newal of a service station lease now is about 34 percent, according to information presented to the Subcommittee.

Your Committee was particularly concerned with the manner in which competition between a major refiner and its dealers affects the balance in a community's retail gasoline marketplace. An observer of the Fort Wayne, Ind., market told your Committee:

> Prior to the Arab embargo, Marathon was well known for having one of the most loyal and well-trained independent dealer organizations in the retail marketing of gasoline in Fort Wayne. As I recall they had approximately 24 independent service station dealers to whom they supplied gasoline prior to 1975.
>
> Beginning in 1975, however, Marathon substantially changed their method of marketing gasoline in Fort Wayne. They cancelled many of their independent operators as their contracts ran out, and today they have only about 10 independent dealers marketing Marathon gasoline in this area. Marketing under the name of Speedway Oil, they continually priced their product lower than other independent outlets in the area.
>
> There are many areas in Fort Wayne where a Speedway station is located just a few short blocks from a Marathon independent dealer.

Throughout its field hearings in Iowa, Missouri, and Ohio, the Committee was informed of the many dealers who failed in direct competition with their large integrated suppliers. In Ohio your Subcommittee was told:

> SOHIO had 112 service stations in the Dayton marketing area in 1974—45 of these were company operated, 67 dealer operated. Presently there are remaining not more than 11 dealer operated stations, the balance run by company operation or "I" manager.
>
> In 1974, Marathon Oil Co. had 37 stations in the Dayton area. There are presently 6 dealer operations with the remaining 32 locations closed or converted to Speedway—12 locations—which are a company operated division of Marathon Oil. All local Bonded locations owned by Marathon Oil are also company operations. They offer no repair service to motorists.

Your Subcommittee heard testimony from many dealers in the Dayton area who were forced to close their stations under pressure from major refiners for whom they operated as independents. One said:

> I was a SOHIO dealer. I am no longer a dealer because, in my opinion I was forced out. Most dealers, if he was a Standard Oil (SOHIO) dealer and if he had a gallonage of more than 45,000 or 50,000 he'd better be looking for another location because he would find that his location would be taken over by the company.

(T)hey came in and said that I had 30 days to get out. The representative for the oil company said it more or less jokingly, and I said, "You are kidding."

He said, "No. I am not."

Another former SOHIO dealer told your Committee:

I was a SOHIO dealer for 10 years. I was relieved of my station about 1½ years ago.

I was there 10 years and they told me that the station was worn out, in 30 days I was out. As far as being in business for your self, when you are with them, it doesn't work that way. I had a good station. I was probably an average station of 60,000 (gallons) per month.

All of a sudden they turn into a company station, and now they are pumping gas only at that particular station. Still another former SOHIO dealer told the Subcommittee

I am a Shell dealer, a former SOHIO dealer for 9 years. In December 1974, they opened a company operation a block away from me and took half my business, and priced it at a lower price than I could make a profit on.

The Subcommittee also took testimony from former Marathon dealers in Dayton, Ohio. Two of them told your Subcommittee:

I am an ex-Marathon dealer. They have proceeded—from 1973 to 1975—in that length of time they have proceeded to put me out of business.

It was just one thing after another, and there was nothing to do but get out.

I am a former Marathon dealer, went into business in 1972, went out of business in 1974, approximately the same way they forced him out.

(W)e went out in November 1974, the station was a Speedway within 30 days. So Marathon knew what they were doing. They had this all laid out.

Prove it? No. How can you? (T)hey put a lot of Marathon dealers out of business in this town, in this area, and they did it, I am sure legally. They just made it tough, and what are you going to do?

The situation in the Ohio gasoline retail market was laid before the ful Committee at the markup of H.R. 6722 by Congressman Tony Hall:

I don't think there is any question in my mind that in the State of Ohio a couple of major refiners were doing everything they could to push the small independent gasoline dealers out of business. Major refiners are opening new stations just a block away from stations that for many years had been selling their brand. Within seven years, two major refiners have become the largest retailers of gasoline in the state through aggressive expansion of their direct sales outlets. It is my feeling that direct refiner resale of gasoline could be the national norm, with a few large firms dominating the re-

tail market for petroleum sales. When you look at the alarming statistics that show between 60,000 and 90,000 independent gasoline dealers went out of business in the last few years, you know right away that something is wrong.

A different sort of problem arises with regard to jobbers, who have been expanding their share of the retail market in recent years. Although the jobber, like the dealer, is dependent upon someone else for a supply of product to sell, the jobber frequently obtains that product at a substantial discount. The intended purpose of the discount is to recognize the jobber's value to the refiner as a wholesale distributor.

However, the jobber who is running his own retail outlets can pass that wholesale discount along, giving those stations a price advantage over stations run by dealers supplied by that same jobber.

Both the jobber and the refiner have the option of selling unbranded motor fuel. In contrast, a lessee dealer almost always is required to sell only branded product, which costs more. Also, the lease agreement usually requires the dealer to operate a full-service station, requires the station be open specific hours of the day, and effectively prohibits the dealer from selling motor fuel obtained from anyone other than the particular brandname supplier.

Federal Regulations

The dealer's problems have been compounded by some of the federal regulations imposed after the 1973 Arab Oil Embargo and the subsequent enactment of the Emergency Petroleum Allocation Act. For instance, under the regulations it has been very difficult for any dealer to increase significantly the gallonage allocated to his or her station, while it has been relatively easy for refiners to get permission to open new stations with allocations that are substantially higher than those of existing stations in the same neighborhood. Similarly, it has been possible for some jobbers and operators of retail chains to shift product around among their various locations while the dealer is stuck with a single, historic allocation figure.

In the area of price controls, the federal energy regulations have, at times, prevented dealers from maximizing profits in order to stay in business. This was particularly true when the gasoline shortage was at its worst in early 1979 and allocations to individual stations were at a very low point. Although overhead and operating expenses remained fairly constant or actually rose (because of changes in the way rental fees were calculated and collected), and sales volume was off considerably, the dealer was not allowed to increase the markup per gallon to compensate for lost volume.

The federal price controls include a complicated system to allow companies to recover "banked" costs. The effect of this was that the major oil companies, which could shift and recover costs on a nationwide basis, shifted their banked costs onto their high-volume company-run gas-and-go stations. This allowed them to raise the price of gasoline at those stations substantially during the shortage, even under the price control system. The result was that refiner-operated stations that originally had generated business by selling gasoline more cheaply

than the traditional stations now were attracting customers not on the basis of price, but because they had higher allocations and could continue to serve customers long after the dealer-run stations had exhausted their meager supplies of gasoline.

The regulations do have some salutory effects as well, however. To a certain extent the Federal controls on gasoline marketing have helped to protect the small business operator against the whims of the big oil companies. For example, several major refiners were stopped in their efforts to make sudden changes in credit terms given to their distributors. And the allocation system has required some refiners to continue supplying some dealers who otherwise would have had their supply of motor fuel cut off. For a while, federal regulators attempted to prevent arbitrary rent increases that were being imposed on many dealers, but rent finally was ruled to be beyond the reach of the regulations.

Representative Thomas J. Tauke expressed the concerns of many when he said, during the hearings on H.R. 6722:

> I think one of the reasons that this committee is getting into this business is because of our concern that in 1981, when regulations do expire, that we have a problem.
>
> Now, I have to tell you I favor deregulation of crude oil and deregulation of gasoline and, generally, the energy industry needs deregulation; but when we have certain oil companies that are saying, we don't want independent marketers we want to market our gasoline primarily through company-run stations, then you know that when the regulations expire you are going to have a situation where the small independent dealer is not going to be supplied.
>
> Besides that, there seems to be something inherently unfair about asking an independent dealer to compete with the same person who is supplying that independent dealer. . . .

Congressman Bedell, at another point in the hearings made this statement:

> Currently, there is a reliance upon federal regulations to give small companies some measure of protection against predatory practices by major integrated oil companies and big refiners. Instead, I believe we should be looking for ways to make the independent business operator better able to compete on a fair and equal basis in the marketplace. Where there is true, meaningful competition, there should be little need for government intervention.

Gasohol Marketing

A dramatic example of the kind of control major oil companies can exercise in the marketplace is provided in the case of gasohol. This product is made up 90 percent of gasoline and 10 percent of ethyl alcohol. The alcohol can be distilled from a variety of renewable domestic sources, including surplus grains, and the gasohol can be blended very easily by local entrepreneurs.

The Congress and the President have set increased production and consumption of gasohol as a national priority recognizing that the

alcohol used in it displaces petroleum products that would otherwise require the importation of additional crude oil into this country. While a few big oil companies—Texaco being the most notable among them—have begun promoting the sale of gasohol, most have resisted its introduction into the market.

Last winter several oil companies announced that they would not allow their dealers to accept the oil companies' credit cards for sale of gasohol. When your Subcommittee on Antitrust and Restraint of Trade declared that it would hold hearings on the subject, announcements were made that the policy was being reversed.

During hearings on H.R. 6722, however, the Subcommittee received testimony concerning a Mobil dealer in Passaic, New Jersey, who was selling gasohol in a station he leases from Mobil. Although he was selling his full allocation of Mobil gasoline, he was threatened with non-renewal of his lease if he continued to sell gasohol, a non-Mobil product.

The president of the Connecticut Gasoline Retailers Association, an organization that has been very actively encouraging its member dealers to market gasohol, explained the situation this way:

> Our superiors are our landlords. We have always had the legal right, and I maintain we still have the legal right right now to sell gasohol but they (the oil companies) never will allow it. They will terminate your lease first by some other method.
>
> The landlord controls the property and also controls the supply. No other, when you are looking at industries, no other industry has this and enjoys this type arrangement. That is why no other industry has been effectively able to control competition the way the oil industry has. They control the retailer. The retailer must buy from them.
>
> Now, why I am stressing this and going over it is this: Everybody knows the oil companies are not going to allow gasohol or do not like the thought of gasohol; but I don't think people really know why.
>
> They are not worried about the 10 percent in alcohol or their image or their brand. What they are worried about is losing their beautiful market that they created.
>
> They don't like the idea of the farmers having 10 percent of the action, but that doesn't even bother them as much as the fact that there may be two or three suppliers per retailer, like any other retailer has.
>
> What that would do to the oil industry is force them for the first time in their history to compete against one another, and this is more damaging to them than whatever bad publicity they were getting for coming out against gasohol.

Existing Laws Inadequate

Representatives of various major oil companies have appeared before your Committee, arguing that existing laws provide sufficient protection to service station dealers. In particular, they cite the federal antitrust laws and the Petroleum Marketing Practices Act.

Your Committee is informed that it is the policy of the Department of Justice not to intervene in cases involving disputes between a refiner and dealers selling its motor fuel products. The Justice Department feels that the federal courts have limited the application of the antitrust laws to competition between brands and that the laws do not apply to intrabrand competition (i.e. between a refiner and its distributors).

The Robinson-Patman Act, which is supposed to protect the small business from price discrimination by suppliers, also has little applicability. Recent court decisions have found many motor fuel sales at the rack to be exempt from the Robinson-Patman Act because they were intrastate transactions.

Witnesses representing service station dealers and small business organizations were unanimous in the view that it is unrealistic to expect the independent service station operator to seek private relief in the courts. Their feeling is that the big oil companies are far better able to cope with the legal expenses and the time required for an antitrust case than are the dealers.

A representative of a major small business association advised the Subcommittee:

> While antitrust remedies do exist, it has been found that these remedies are particularly costly "action", and not generally available to the independent service station operation. Therefore, additional action is needed.

In 1978 the Congress did recognize the difficulties being experienced by service station operators when it passed the Petroleum Marketing Practices Act (PMPA), also referred to as the Dealer Day in Court Law. Essentially, that legislation sought to stop the then-common practice of arbitrary termination of leases by major refiners.

Another small business association explained why the PMPA has not stopped the carnage among dealers:

> (I)t is true that the Petroleum Marketing Practices Act of 1978 does provide for the protection of distributors and retailers of gasoline under a national trademark by establishing protection from arbitrary or discriminatory terminations or non-renewals of leases, prohibiting the refiners and resellers from failing to renew a relationship, unless such action is based upon grounds described in the Act. The Act has a serious flaw, however, in that it does not address the economic eviction techniques that are being used extensively by many of the refiners in attempting to increase control of the retail end of the business. In addition, even if the Act were amended to deal with those practices, the length of time and great legal expenses involved in seeking legal recourse via the courts makes it extremely difficult for the independent dealer to use such an avenue successfully.

Energy Department Study

Title III of the Petroleum Marketing Practices Act requires the Department of Energy to conduct a study of whether or not intergrated refiners are subsidizing their aggressive retail marketing

operations by taking profits from their "upstream" operations (crude oil production, transportation and refining) and using them to cover temporary losses in "downstream" marketing operations. Although the statute called for completion of this report by December 1979, we have been advised that the final report will not be delivered to Congress until October 1980, probably after adjournment.

An interim report with preliminary findings, originally scheduled for completion in March of this year, was delivered to the Congress in early May. Witnesses from the Department of Energy's Office of Competition, which is responsible for the report, testified before the Antitrust Subcommittee on three separate days.

The preliminary report uses a controversial "netback differentiation" method of analysis, and applies it only to data gathered in one regional market. There remains a great deal of controversy surrounding the DOE report, with witnesses and committee members raising many questions about the methodology used and the conclusions drawn.

Your Committee has been told that the methodology is being reevaluated and that new analyses, using new data bases, will be in the final report. The findings presented in the interim report are subject to revision, we are told.

Perhaps the greatest concern your committee has with the Department of Energy's report, aside from questions about methodology and timeliness, is the limited scope of the inquiry. Despite its title, "The State of Competition in Gasoline Marketing," the DOE study, at least in its preliminary form, focuses almost exclusively on the question of evaluating which method of bringing a gallon of gasoline to market provides the greatest netback return for the refiner.

It seems that, in the eyes of DOE, so long as a refiner is making a profit—no matter how slim—while directly retailing its motor fuel product, then competition exists. Your Committee is deeply concerned that this method of evaluating competition ignores the point that, even if the refiner is selling gasoline to its retail competitors at a fair price, and even if the refiner is selling gasoline at its own company-run outlets at a profit, there are other ways the deck can be stacked against the independent service station dealer.

The following dialogue between Antitrust Subcommittee Chairman Bedell and William C. Lane, director of DOE's Office of Competition, illustrates this problem:

> Mr. Bedell. (You express) no concern about whether there is equal opportunity for competition or not. You have never mentioned that once in anything you have said so far, that there needs to be free and equal opportunity . . .
>
> Let me ask you a question. You and I are competing. I happen to own your facilities, determine the price of the rent you are going to pay, determine the terms of the rent you are going to pay, determine the terms of your lease. I furnish you with your product. I determine the price you will pay for your product under decontrol. I determine the quantity of that product you will get. I determine what sort of situation will exist with your credit cards. You and I are competing equally and fairly, I assume you would feel. Is that correct?

Mr. LANE. I wouldn't say we are competing equally, but that doesn't necessarily mean we are not competing fairly.

Mr. BEDELL. Excuse me.

Mr. LANE. Wait a second. When I entered into this contract with you under which we are going to assume this relationship, presumably I was over 21, right? Presumably, I was an adult, I was capable of deciding that in my best interest I would like to enter into a contract with you that said that. Otherwise, I would have gone and done something else with my life; right?

Mr. BEDELL. So what you are really saying is, as long as somebody is free and 21 the government should have no concern how much one person steps on another person, because they didn't have to get to where they could be stepped on if they didn't want to. We are to have no control over change, as we have seen with decontrol, and you are saying it isn't necessarily equal but that doesn't concern you in the Office of Competition whether it is equal or not.

It is terribly frustrating for some of us who would like to see the opportunity for small business to continue to have the opportunity to compete in our free enterprise system to have the Department of Energy determine that you are going to be in charge of the Office of Competition and you come before our committee and tell us that you don't really worry about whether things are equal or not.

Several witnesses, chiefly those representing oil companies and various Federal agencies, suggested to your Committee that it would be in order to await completion of the so-called Title III study before we take action on gasoline marketing legislation. This point was considered at the subcommittee and full committee markups, and the members concluded that there is already a substantial body of evidence indicating the gravity of the problems confronting small and independent marketers of motor fuel. Noting the Department of Energy's poor record of on-time delivery of reports, and the pressing need for enactment of legislation to remedy the many problems that were documented in the course of many days of hearings, your Committee recommends immediate enactment of the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722 as amended.

How This Legislation Will Help

The greatest problem confronting independent service station dealers is the entrance by major refiners into the retail marketplace. There are many ways in which the refiner can manipulate the business circumstances of those against whom it would compete. The hearing record is replete with examples of refiners imposing exorbitant rent increases, changing credit policies, changing or withdrawing maintenance services, imposing new and burdensome operating requirements—all to the detriment of the independent dealer.

As one witness testified:

> (T)here is no way of preventing these unfair trade practices without forcing refiners completely out of the retail end

> of the petroleum industry. Fair competition is simply not possible when a supplier competes directly with those they supply. For this reason, the National Federation of Independent Business supports the passage of the Small Business Motor Fuel Marketer Preservation Act, which would prohibit major refiners from directly operating any retail gasoline outlets.

Your Committee agrees that divorcing the major integrated refiners from the retail gasoline market will help assure that the competitors in that marketplace do not enjoy unfair advantages over one another. Further, it will help assure that changes in the marketplace come as a genuine response to consumer demand, rather than as a reaction to the self-determined interests of the big oil companies.

In the course of hearings on H.R. 6722, your Committee was convinced that small and independent refiners, jobbers and chain marketers all are important elements in the gasoline marketplace. Your Committee feels that so long as the dealer is given an opportunity to compete on a fair and equal basis with those other marketers, the public will benefit from that competition.

Testimony from numerous witnesses showed that independent refiners and operators of retail chains are very aggressive marketers and that they often offer gasoline for sale to the public at prices below those charged by the major refiners. Nothing in this legislation would inhibit that sort of healthy competition, nor would it in any way preclude dealers from moving into gas-and-go or other non-traditional marketing forms.

The refiner sales rule established by H.R. 6722 for small and independent refiners allows them to remain active in the retail marketplace. They are permitted to sell through their refiner-run outlets as much gasoline as they sold in 1978, plus half of any increase in refinery production over 1978 sales, plus as much gasoline as they purchase from others.

Testimony presented at the hearings on H.R. 6722 clearly indicated that virtually none of the smaller refiner/marketers manufacture as much gasoline as they sell. Thus, any expansion of their retail operations must come as a result of buying and reselling gasoline obtained from others. So long as those refiner/marketers are purchasing product on terms similar to those available to others, they will prosper in the marketplace solely as a result of their skills as marketers, not because of any inherent advantages they might enjoy as refiners.

The same is true in the case of jobbers who have entered the retail marketplace. Currently, they do enjoy several advantages over dealers, because of the federal regulations concerning allocations and prices. Once the controls expire in 1981, there still remains a problem with regard to functional discounts now given to jobbers at the rack.

H.R. 6722 provides for what is known as rack pricing. It requires a refiner to sell a motor fuel product on the same terms to all wholesale customers purchasing similar quantities at similar times and places. This would eliminate any unfair adantage enjoyed by jobbers and others who presently are able to purchase gasoline at prices lower than those available to dealer. If jobbers decide to engage in retail opera-

tions, they will be starting on the same terms as the dealers with whom they would be competing.

The current practice of most refiners is to give certain chain marketers, bulk purchasers and other preferred customers even greater discounts than those available to the jobbers. Rack pricing based upon actual costs will restore equity in the wholesale pricing of motor fuel and allow dealers and jobbers to compete on a more equal basis with chain marketers, convenience stores and other recent entrants to the gasoline marketplace.

Some jobbers have expressed concern over loss of their functional discount. Your Committee believes that jobbers do perform certain vital functions in the marketplace, especially the storage and distribution of product in local markets, and that there will continue to be a demand for those services after enactment of this legislation. To the extent that the services are needed, the jobber is in a position to provide them and to be fairly compensated for them.

Included within the rack pricing provision of H.R. 6722 is a requirement that those small and independent refiners who are permitted to remain in the retail market must sell motor fuel at retail at prices that reflect the refiner's rack price to wholesale customers, plus the refiner's retail markup. This provision is intended to correct the situation wherein refiners have been observed selling motor fuel at retail in company-run stores at prices that are equal to or below the wholesale price charged by that same refiner to dealers in the area. Obviously, the current situation unjustly places the dealer at a very great disadvantage.

The legislation includes a provision assuring the dealer of the right to obtain motor fuel from sources other than the regular supplier if that supplier is not able to provide the product sought. It also prohibits anyone from interfering with the dealer who seeks to purchase, store or sell such motor fuel.

This provision is needed because some refiners have denied dealers the opportunity to meet customer demands; they have effectively barred those dealers from selling motor fuel products not obtained from the particular refiners. This problem is especially noticeable in the case of gasohol, for which there is substantial consumer demand, but which is not offered by many refiners. Another problem this provision seeks to correct is the plight of the dealer who is affiliated with a supplier that cannot meet the dealer's needs for additional quantities of product to sell.

Your Committee recognizes the merits of maintaining brand integrity, but also notes the burdens now placed upon the small business operator. Therefore, while providing the dealer with the right to seek product elsewhere if necessary, the legislation also requires that customers be given notice at the point of sale if the product being sold was not supplied by the refiner whose name is on the station. We note that this currently is the practice at many stations that are selling gasohol, and we expect that consumers will have little problem with this practice being extended to other motor fuel products. Existing statutes regarding comingling of product, trademark protection, etc. are not affected by this legislation.

H.R. 6722 does contain a provision assuring that a dealer who leases a service station from a refiner shall have the right of first refusal to purchase that station if it is offered for sale. The bill sets forth a procedure to be followed, to assure that the dealer and the refiner are able to come to terms on the fair market value of a station being offered for sale.

Currently, the Petroleum Marketing Practices Act also includes a right of first refusal provision. However, it does not provide a mechanism for resolving disputes between the refiner and the dealer regarding the value of the property. H.R. 6722 provides that the Small Business Administration shall establish criteria for an independent appraisal. Your Committee expects that such an appraisal will take into account the value of the site for alternative uses, as well as its value as the location of a motor fuel service station.

Finally, the legislation specifies that the Small Business Administration shall make loan guarantees available to dealers seeking to purchase service stations. SBA does not issue or guarantee loans in most cases when the chief use of the money would be for the acquisition of land. As the largest single factor in the cost of a gas station may be price of the land it sits on, this can be a serious obstacle today.

These two provisions, the enhanced right of first refusal and the clarification of eligibility for SBA loans, should make it easier for a dealer to become the owner of a truly independent business. The present situation, with so many dealers leasing stations from refiners, has been compared to economic serfdom, and your Committee expects these provisions will lead to greater independence on the part of the dealer.

What the Bill Would Do

The Small Business Motor Fuel Marketer Preservation Act, H.R. 6722 as amended, would affect several aspects of motor fuel marketing. The following is a description of the various provisions of the legislation.

1. Dealers' rights; SBA loan guarantees

H.R. 6722 provides that the proprietor of any leased service station that is offered for sale by a refiner would have the right of first refusal to purchase that station. SBA loan guarantees would be made available for such purchases.

The following procedures would be used in offering a gas station for sale to the leaseholder.

First, the refiner shall make an offer to the lessee dealer. The dealer has 60 days to consider the offer.

Second, the dealer may make a counter offer. If this is not accepted, an independent appraisal of the value of the property shall be made, subject to rules to be established by the Small Business Administration. The dealer will have the right to purchase the property at the appraised value within 30 days.

2. Divorcement; refiner sales rule

Effective one year after date of enactment, major integrated refiners would be prohibited from directly operating any retail motor fuel service station. There would be no restriction on continued ownership

of gas stations; they could be leased to dealers or otherwise operated by independent marketers while the refiners continue to hold the properties.

Refiners which have total refining capacity of less than 175,000 barrels per day or which produce less than thirty percent of their own crude oil requirement would be exempt from the divorcement provision. This definition of small and independent refiners parallels the standards established in the Emergency Petroleum Allocation Act.

Small or independent refiners would be subject to a refiner sales rule. Each may sell through its own directly-operated outlets an amount of motor fuel equal to: (1) all motor fuel purchased from others; plus (2) all motor fuel manufactured by the refiner—up to 1978 direct sales total; plus (3) 50 percent of the excess of motor fuel manufactured above 1978 direct sales total.

3. Rack Pricing

Within one year after date of enactment, refiners would be prohibited from charging different prices to different customers if they are purchasing similar quantities of product at the same time and place. "Similar quantities" means purchases in amounts equal to dealer tankwagon, railroad car, barge capacity or pipeline tender offer. To the extent that the supplier can show actual cost differences for providing different quantities of product, the pricing may reflect those differences. Uniform and reasonable surcharges could be imposed on purchasers who will sell under a trademark or brand name (reflecting costs of advertising, credit cards, etc.).

Those refiners which continue direct operation of motor fuel service stations would be required to transfer products to their own outlets at a price comparable to what they chargre their wholesale customers at the rack.

4. Open Supply

Effective one year after date of enactment, it would be unlawful for anyone to interfere with the right of a dealer to purchase, store or sell motor fuel products obtained from anyone else. Agreements providing that a dealer shall buy products only from a particular supplier would be permitted only if they specify the dealer's right to purchase product elsewhere if it is not available from the regular supplier. Dealers operating stations bearing a refiner's tradename or trademark must provide point-of-sale notice to customers if product being sold was not obtained from the brand-name supplier.

5. Information Required

Within three months after date of enactment, refiners would be required to provide the following information to the Federal Trade Commission: (a) total amount of motor fuel sold in refiner-operated outlets during the preceding year; (b) total amount of motor fuel manufactured; (c) total amount of crude oil produced; and (d) total amount of crude oil refined. The FTC would be required to establish regulations for annual reports. To the extent that the information sought is available from other agencies of the government, the Commission would waive reporting requirements.

6. Penalties; Enforcement

Violation of this Act would be punishable by fines of up to $50,000 per month for each service station operated after the deadline for divorcement, and up to $25,000 for each 25,000 gallons of motor fuel tion of the rack pricing provision would be punishable by fines of up to $10,000 per violation. Responsibility for enforcement would be given to the FTC. In addition, individuals would bring civil actions against anyone who fails to comply with the Act.

Conclusion

Your Committee on Small Business is deeply concerned by the dramatic decline in the number of small and independent businesses engaged in gasoline marketing. Over one-third of all independent service stations have gone out of business in recent years, and the trend continues.

Refiners of motor fuel increasingly are moving into the retail marketplace, competing against the retail dealers. From 1972 to 1979, refiners more than doubled the amount of gasoline they sold at retail through refiner-run outlets. It is not possible for dealers to compete on a fair and equal basis with those who can exercise control over the dealers' rents, supply and price of product, credit and advertising policies, and other elements vital to the conduct of business.

A specific example of the control refiners can exercise over their independent dealers is found in the case of gasohol. Despite governmental policy to promote the use of this fuel, refiners who do not produce gasohol have taken various steps to discourage dealers from providing it to the public. Your Committee believes a dealer should have the right to go to alternate suppliers and to market products obtained from other sources if the regular supplier is not willing or able to meet the needs of the dealer and the public.

Dealers also face increasing competition at the retail level from jobbers, businesses that previously had operated almost entirely at the wholesale level. Your Committee is concerned because these jobbers in many cases enjoy certain price discounts that are not available to dealers who must compete with them, selling those same products. This, too, impairs equitable competition.

Government controls of gasoline price and supply have been a mixed blessing for the independent dealer. On the one hand, dealers have not had the flexibility needed to respond to certain changes in business conditions. On the other hand, the regulations have inhibited some refiners from taking certain arbitrary or predatory actions they might have engaged in otherwise. With controls due to expire in September 1981, your Committee is concerned about the dealer's renewed vulnerability to unfair practices that may be engaged in by large, integrated oil companies.

The Small Business Subcommittee on Antitrust and Restraint of Trade engaged in a year-long study of gasoline retail marketing practices and of proposed remedies for problems in that area. An independent study of petroleum product marketing was conducted by the Small Business Subcommittee on Energy and Environment. Both arrived at the finding that legislation of this nature is needed.

H.R. 6722 is the product of extensive hearings and review. After markup it was approved by a unanimous vote of the Antitrust Sub-

committee. The legislation is carefully constructed to foster and stimulate a truly competitive environment in which the small and independent motor fuel marketer will have a fair chance to serve the public.

The case for enactment of this legislation was articulated at the full committee markup by Congressman Tom Steed, ranking member of your Committee. The following is an excerpt from his extemporaneous remarks:

> I can give you a bit of history on this subject. Earlier on, some years ago, when the matter of the failures of independent dealers in the petroleum distribution business, called filling station operators, was in trouble, I got involved in holding a lot of hearings on gasoline price wars. Congressman Jimmy Roosevelt and I held hearings from California to New England, and down in the South all the way to Florida and in Virginia. There was an endless amount of it, and the failure of independent operators in the petroleum distribution business was running between two and three thousand a year. And it is still doing it.
>
> Now in that time, the big companies were very opposed to any legislative action to help those people. They promised all sorts of company policy changes so that the dealers would have some chance to survive. But the thing went on anyway. . . .
>
> Today, they don't have the price factor to handle the young independent dealers. They have supply.
>
> There is a shortage of this stuff now, and they use that. Now if you want to let the situation go on, you listen to all this stuff, "You shouldn't interfere in this industry." But, if you do, the risks will remain for independent dealers, and the distribution of petroleum supplies will still be the most dangerous and have the highest mortality rate of any industry in the nation.
>
> Now this has been true, to my personal experience, as a member of this committee for 25 years, and I don't know whether it is in the consumer interest to have this high mortality rate continue or not. But I don't think it is. And if something isn't done in the larger communities of the country to improve that industry, the new techniques of rip off which are becoming prevalent throughout the country will increase and that will be another price the consumer has to pay.
>
> If we are really going to help fight the battles of small business, this is one field that cries out for it, and has for a long time.

Matters Required To Be Discussed Under House Rules

In compliance with clause 2(l)(2) of rule XI of the House of Representatives, the following statement is made relative to the recorded vote on the motion to report H.R. 6722, as amended.

A majority of the committee voted in person and was actually present and the motion was approved by a recorded vote of 25 ayes and 1 nay, with 4 votes being cast by proxy.

In compliance with clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A), relating to oversight findings, the committee finds, in keeping with clause 2(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House, which states:

> In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee. * * *

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

> Section 3(a)(2) of the Congressional Budget Act defines the term "tax expenditures" as those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability.

None of the provisions of H.R. 6722 deals with taxation and thus, in your committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitute new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for appropriation of funds to permit that agency to enter into obligations; and (3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of H.R. 6722 appropriates funds and thus, in your Committee's opinion, the bill does not provide new budget authority. Accordingly, no comparison of budget authority, outlays or tax expenditures or 5-year projections have been made.

With regard to subdivisions (C) and (D), a cost estimate of the Director of the Congressional Budget Office relative to H.R. 6722 follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 13, 1980.

Hon. NEAL SMITH,
Chairman, Committee on Small Business, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6722, the Small Business Motor Fuel Marketer Preservation Act of 1980, as ordered reported by the House Committee on Small Business on July 1, 1980.

The bill would allow the proprietor of any leased motor fuel service station that is offered for sale by a refiner to have the right of first refusal to purchase the station. The lessee dealer would also be allowed to make a counteroffer. If this is refused, an independent appraisal could be conducted. The cost of the appraisal, subject to guidelines established by the Small Business Administration (SBA), would be borne equally by the dealer and the refiner.

The SBA 7(a) business loan program would be expanded to allow the SBA to issue guarantees to be used by service station dealers to purchase retail service stations. H.R. 6722 would not increase the program level for SBA loan guarantees, but rather would expand the categories of eligibility for this type of assistance. Although it is assumed that this provision would have no significant cost impact upon the federal government, increased demand could result in pressure to increase the program level in future years. Furthermore, this new category of eligibles could incur defaults on SBA guarantee loans at a rate in excess of the current default rate, although this is unlikely since the same SBA loan criteria apply to all applicants.

In addition, Section 3(g)(7) would prohibit major integrated refiners from directly operating any motor fuel service stations, effective one year from date of enactment. Small and independent refiners would have a limit placed upon the amount of fuel available for sale through their company-run service stations. H.R. 6722 would require refiners to submit production and refinery data to the Federal Trade Commission (FTC), which would have the responsibility for developing and enforcing the regulations necessary to implement the legislation. Based on information from the FTC, it is estimated that in order to develop regulations the agency would require four professionals, plus support staff, for about one-half a year at a cost of approximately $100,000, with continuing costs of about $30,000 per year thereafter.

In addition, H.R. 6722 would require the FTC to bring civil actions if violations occur, although the bill would also allow litigation between private parties as another mechanism for redress. It is impossible to estimate precisely the level of federal litigation resulting from violations of H.R. 6722.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject matter contained in H.R. 6722.

In compliance with clause 2(l)(4) the committee concludes that the provisions of this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the committee makes the following statement:

The costs attributable to this bill for the current fiscal year and for fiscal years 1981–85 are as follows: the provisions of the bill clarify terms and conditions of SBA's 7(a) loans and involve only

administrative costs; no increase in loan program levels is contemplated. This bill does not require an authorization for the appropriation of additional funds.

The legislation's initial regulatory and enforcement responsibilities will impose some additional duties on the Federal Trade Commission. However, since private parties may bring civil actions for damages and to enforce compliance with provisions of H.R. 6722, there is no requirement for a permanent increase in FTC personnel.

Accordingly, any costs associated with this bill will be minimal and borne by the agencies.

Your Committee has not received a cost estimate on this bill from a Government agency.

In your committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

Section-by-Section Analysis of H.R. 6722, as Amended

Section 1 provides that this Act may be cited as the "Small Business Motor Fuel Marketer Preservation Act of 1980".

Section 2(a) amends the Small Business Act, to allow the Small Business Administration to issue loan guarantees to be used by service station dealers acquiring retail service stations. Such loan guarantees may be made without regard to whether the primary use of the loan would be for the acquisition of land at the facility.

Section 2(b) amends section 3 of the Small Business Act by adding the definitions of "motor fuel service station" and "dealer" as they are defined in H.R. 6722.

Section 3(a)(1) prohibits refiners, other than independent or small refiners, from operating retail service stations in the United States.

Section 3(a)(2) spells out the manner in which a refiner may sell his interest in a retail service station, including the provisions that the occupying dealer is to be given a right of first refusal to buy the interest (Sections 3(a)(2)(A), 3(a)(2(B)(i) and (ii)), that there is to be an independent appraisal of the worth of the interest in the event that the dealer does not agree to the price asked by the refiner and the refiner does not accept the dealer's proffered price (Section 3(a)(2)(B)(ii)(I) and (II)), and that the Small Business Administration shall prescribe the manner and procedure for the appraisal (Section 3(a)(2)(C)). Section 3(a)(2) also provides that if an independent appraisal is conducted, the cost shall be shared equally by the refiner and the dealer.

Section 3(b) limits for those refiners who are permitted to continue direct operation of retail outlets (i.e. the small and independent refiners) the amount of motor fuel they can sell through their company-run service stations. The following formula is used to establish the maximum amount each refiner is allowed to sell in its company-operated stations during an applicable calendar year:

(A) The amount of motor fuel sold by that refiner at its company-run service stations during 1978; plus

(B) The amount of motor fuel equal to 50 percent of the excess of the amount of motor fuel manufactured by that refiner during the applicable calendar year, over the amount of motor fuel sold by that refiner at its company-run gas stations during 1978; plus

(C) All motor fuel purchased by that refiner from others during the applicable calendar year.

The term "applicable calendar year" is defined as a calendar year ending after the effective date of this provision.

Section 3(c)(1) prohibits refiners from charging different prices for basic units of motor fuel, except that price differentials which made "only due allowance for differences in the cost of manufacture, sale, or delivery . . . resulting from the differing methods or quantities in which such motor fuel is sold or delivered" would be permitted. The section also makes it unlawful for a refiner to withhold available motor fuel from sale and, subsequent to the withholding, retail the withheld motor fuel at prices below which he would have had to charge had he had to purchase the motor fuel at the prices charged to other purchasers and wished to derive the same profit from the retail sale as he did absent the purchase.

Section 3(c)(2) explains that the prohibition on price differentials is not to be construed as preventing a refiner from charging any person a surcharge for the use of a "trademark, trade name, service mark, or other identifying symbol or name and any services associated with such use", provided that the surcharge is "uniform and reasonable".

Section 3(d)(1)(A) prohibits anyone from restraining, interfering with, or in any way preventing a dealer from purchasing, storing or selling motor fuel obtained from a source other than that person.

Section 3(d)(1)(B) permits contracts or agreements requiring the purchase of any motor fuel by a dealer exclusively from a particular refiner or supplier, provided that such an agreement assures the dealer the right to purchase such motor fuel product from others if the product is not readily available from the dealer's regular refiner or distributor.

Section 3(d)(2) makes it unlawful for any dealer to sell, at a service station displaying a "trademark, trade name, service mark, or other identifying symbol or name owned by a refiner", any motor fuel obtained from a source other than that refiner without providing "reasonable notice at the point of sale" to purchasers of that motor fuel that it was so obtained.

Section 3(e)(1) requires all refiners to provide the following information to the Federal Trade Commission:

A. The total number of gallons of motor fuel sold at that refiner's company-operated service stations in the United States during the previous calendar year;

B. The total number of gallons of motor fuel manufactured by that refiner in the United tSates during the previous calendar year;

C. The total number of barrels of crude oil produced by that refiner during the previous calendar year; and

D. The total number of barrels of crude oil refined by that refiner during the previous calendar year.

This information must be provided to the Federal Trade Commission within 90 days after the date of enactment of this legislation, and annually thereafter.

Section 3(e)(2) requires that within 90 days after the date of enactment, each refiner shall provide the FTC with the information listed in Section 3(e)(1)) with respect to calendar year 1978.

Section 3(e)(3) prohibits the FTC from requiring any refiner to provide information that the Commission is able to obtain from other agencies or departments of the Federal government.

Section 3(f) defines:

"producer" as any person (or person related to that person) engaged in the production of crude oil or who owns crude oil when it is produced. (Section 3(f)(1));

"refiner" as any person (or person related to that person) engaged directly in the refining of motor fuel or any producer for whom crude oil is refined under contract. (Section 3(f)(2));

"independent refiner" as a refiner which obtained, directly or indirectly, in calendar year 1978, more than 70 percent of its refinery input of crude oil from producers other than those to which it is related (Section 3(f)(3));

"small refiner" as a refiner whose total refinery capacity does not exceed 175,000 barrels per day (Section 3(f)(4));

"related person" as one who holds or in whom another holds a significant ownership interest, or one of two or more persons in each of whom another holds a significant ownership interest (Section 3(f)(5));

"significant ownership interest" as the largest single share of the outstanding stock of a corporation (Section 3(f)(6)(A)), the largest single interest in the profits or capital of a partnership (Section 3(f)(6)(B), or the largest single share of the beneficial interests in an estate or trust (Section 3(f)(6)(C)); Section 3(f)(6) further specifies that, "an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be";

"motor fuel" as gasoline, diesel fuel, alcohol, or any mixture of them suitable for use as a fuel in self-propelled vehicles designed primarily for use on public roads; (Section 3(f)(7));

"motor fuel service station" as "any facility at which motor fuel is sold at retail" (Section 3(f)(8));

"sell at retail" as sales to the "general public for ultimate consumption" (Section 3(f)(9));

"dealer" as "a person who occupies as a retailer a motor fuel service station" (Section 3(f)(10)(A)), except that when used in subsection (d)(2) (which mandates that a dealer who sells other than the product of the trademark owner indicated by a display at the station provide reasonable notice of that fact to purchasers of that product) "dealer" means only one "who occupies the motor fuel service station under lease or rental agreement with the refiner" (Section 3(f)(10)(B)(i)), and "dealer" never describes a retailer-lessee who is "related" to the refiner-lessor (Section 3(f)(10)(B)(ii));

"operate" as engaging by a refiner, at motor fuel service station in the retail sale of motor fuel through any employee or commissioned agent of the refiner whose duties include selling of such motor fuel or through any contract operator or other person under the refiner's supervision (Section 3(f)(11));

"basic unit" of motor fuel as a dealer tank wagon or transport

load, a railroad tank car load, a barge load, or a pipeline tender (Section 3(f)(12)(A)–(D));

"person" as "one or more individuals, partnerships, associations, corporations, legal representatives, joint-stock companies, trustees and receivers in bankruptcy and reorganizations, common-law trusts, or any organized group, whether or not incorporated" (Section 3(f)(13));

"United States" as the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States (Section 3(f)(14));

Section 3(g) of H.R. 6722 specifies the following monetary penalties for violation of certain of the provisions of the measure:

up to $50,000 per month for each motor fuel service station operated in violation of the prohibition against service stations being operated by major integrated refiners. (Section 3(g)(1));

up to $50,000 for each violation of the mandate to offer an occupying service station dealer the right of first refusal to buy an interest in that station if the owner-refiner wishes to dispose of it (Section 3(g)(2));

up to $25,000 for each 25,000 gallons of motor fuel sold by a small or independent refiner in excess of the amount permitted under Section 3(b). (Section 3(g)(3));

up to $10,000 for each sale made in violation of the "price discrimination" provisions in Section 3(c) (Section 3(g)(4));

up to $50,000 for each violation of the Section 3(d)(1) prohibition against interfering with a dealer's right to purchase, store, or sell motor fuel (Section 3(g)(5));

up to $10,000 for each violation of the Section 3(d)(2) mandate to inform purchasers of motor fuel not obtained from the refiner whose trademark is displayed at a service station of the fact that the product was not supplied by that refiner (Section 3(g)(6));

Section 3(g)(7) mandates that the Federal Trade Commission bring a civil action in U.S. District Court against any person who violates any substantive provision of H.R. 6722 for appropriate relief, including a permanent or temporary injunction, such action may be brought in the district in which the defendant is located or resides or does business; the court in which the action is brought would have specific authorization to restrain the violation or to require compliance with the applicable provision.

Sections 3(h)(1) and (2) create a cause of action on behalf of persons "directly affected" by any person's failure "to comply with the requirements of" Section 3 and permit them to sue, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the defendant maintains his principal place of business, or does business, for damages and appropriate equitable relief, including temporary and permanent injunctive relief. A prevailing plaintiff is entitled to "reasonable attorney and expert witness fees," except that the court would be able to exercise its discretion "not to direct that such fees be paid by the defendant" upon its determination that the plaintiff is to be awarded only "nominal damages".

Section 3(i)(1) directs that subsections (a)(1)—the prohibition against certain refiner-operated motor fuel service stations; (b)—the rule for direct retail sales by small and independent refiners; (c)—the anti-price discrimination provisions; and (d)—the provisions which address the ways in which trademarked and other motor fuel are to be sold—would "take effect one year after the date of enactment of this Act."

Section 3(i)(2) requires that the Federal Trade Commission prescribe the initial regulations required by the provisions of this Section within 180 days from the date of enactment of H.R. 6722.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Small Business Act

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Sec. 3. (a) * * *

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(d) For purposes of section 7(a), the terms "motor fuel service station" and "dealer" have the meanings set forth in paragraphs (8) and (10)(B), respectively, of section 3(f) of the Small Business Motor Fuel Marketer Preservation Act of 1980.

* * * * * * *

Sec. 7. (a) The Administration is empowered to make loans to enable small-business concerns, or small-business concerns 100 percent owned and controlled by an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance residential or commercial construction or rehabilitation for sale: *Provided, however,* That such loans shall not be used primarily for the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. *Notwithstanding the proviso in the preceding sentence, the Administration may participate on a deferred basis in any loan under this section to any dealer acquiring a motor fuel service station without regard to whether such loan is primarily for the acquisition of land.* The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) * * *

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MR. MARRIOTT'S SUPPLEMENTARY VIEWS TO THE COMMITTEE REPORT ON H.R. 6722

The passage of H.R. 6722 is urged as necessary to prevent the major oil companies from eliminating their dealers and substituting company employees to operate service stations. It is argued that, by prohibiting company operation of stations, competition at the retail level will be preserved.

There is no question that Small Business retail station owners are having real problems. I am concerned, however, that this bill will not help the basic problem, that of government overregulation and interference in the free market.

Virtually all witnesses appearing before the Antitrust Subcommittee testified that the Department of Energy's current price and allocation regulations have seriously impaired competition—to the injury of dealers and others in the petroleum industry.

Under DOE allocation regulations, approval of a gallonage increase for an existing dealer is almost impossible, yet generous treatment is provided for new service stations. The "upward certification and lack of downward certification" rule for jobbers contributes to the reduced availability of gasoline from the refiner for existing dealer accounts.

DOE pricing regulations have also created market distortions that jeopardize the dealer's ability to compete. If a dealer takes maximum markup over the cost paid for the product, he cannot lawfully pass-through further non-product costs. Similarly, the regulations do not permit dealers to "bank" costs. Dealerships operated by jobbers are advantaged by the DOE jobber discounts that were in effect in May, 1973.

In addition, DOE has held maximum retail prices at refiner-operated stations below the maximum prices authorized to dealers. These and other aspects of the regulations have made it difficult for dealers, particularly branded dealers, to compete in the marketplace.

It is, at least, untimely to consider a drastic restructuring of petroleum marketing before these oppressive government restrictions can be removed and the industry allowed to function normally.

I am also deeply concerned about the adverse effects that may result if this bill is passed. I list these areas so that each may be carefully considered.

H.R. 6722 WOULD INJURE JOBBERS

Any person who performs a true jobber function will go out of business. Jobbers are wholesalers who buy motor fuels from refiners and resell them to dealers and others. Jobbers receive these products, store and deliver them as needed by dealers, and carry the accounts receivable. To cover the costs of these functions, while assuring a reasonable

profit, it is necessary for jobbers to buy at a price below the buying price of dealers. H.R. 6722 would eliminate this "functional discount" by requiring "rack pricing," that is, by forbidding refiners to sell motor fuel, "at any time, at any point of transfer at differing prices to purchasers of the same basic units of such motor fuel." Such uniform pricing for all customers would eliminate petroleum jobbers as a substantial class of small businessmen.

H.R. 6722 WOULD RESTRAIN THE COMPETITION OF "INDEPENDENT" AND "SMALL" REFINERS [1]

While the bill would not divorce independent or small refiners from their company-operated stations, it would restrict their retail pricing and would limit the volume of motor fuels that they could sell through their stations each year.

The result of these provisions would be less competitive and higher prices for consumers. Mr. Flexner, of the Justice Department, criticized such restrictions on the smaller refiners as retarding the most significant price competition faced by the major oil companies, which rely primarily on dealer distribution, and as increasing gasoline prices to motorists. (June 11, 1980 transcript, pp. 30–33).

H.R. 6722 MIGHT WELL INJURE CONSUMERS

Many witnesses appearing before the Antitrust Subcommittee testified that motorists will pay more for gasoline as a result of this legislation. The Justice Department, the Federal Trade Commission, and the Department of Energy—all government agencies that deal with competition—testified that it would be anticompetitive and inflationary to remove refiners from retail motor fuel sales.[2]

> . . . because such legislation excludes one class of firms, the major refiners, from gasoline retailing and strictly controls the terms on which a second class of firms, the non-major refiners, may operate in that market. H.R. 6722 limits free entry and pricing discretion, that are at the heart of the competitive process. The result will almost certainly be higher prices to consumers. (Statement, p. 14.)

Simply stated, many witnesses testified that H.R. 6722 may fail to solve the problems faced by the small service station dealer. Many have gone so far as to suggest it will be injurious to them in the long run. And, while failing to address many of the real causes of those problems, it may raise false hopes on the part of the dealers. Those hopes for a solution may die bitter deaths if the problems go on and the dealers continue to go under.

In conclusion, there is evidence that H.R. 6722 will not accomplish the purpose of correcting independent gasoline marketers' problems;

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[1] As defined by the bill, an "independent refiner" is one who during 1978 had to rely on others for more than 70 percent of his crude oil requirements; and a "small refiner" is one whose aggregate refining capacity does exceed 175,000 barrels per day (3)(f)(3)(4).

[2] See Donald L. Flexner, acting Assistant Attorney General, Antitrust Division, Department of Justice, June 11, 1980, transcript, p. 37; Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, May 20, 1980, transcript, p. 97; and, William C. Lane, Director of the Office of Competition, Department of Energy, May 8, 1980, transcript, pp. 60–62.

moreover, there is evidence that the bill creates anticompetitive and inflationary problems.

These anticompetitive issues and the additional costs to the consumers should be addressed and answered. Our own Congressional Research Service, in a May 5, 1980, study, has concluded:

> Legislation such as that embodied in H.R. 6722 is based on disputed data and statistics; hard evidence to resolve those disagreements is not yet available.

Additionally, DOE's Office of Competition has not yet completed the Congressionally mandated Title III analysis of the real marketplace.

Most importantly, H.R. 6722 falls short of living up to the record that has earned this Congress a designation as the "oversight and deregulation" Congress.

H.R. 6722 runs counter to our Congressional efforts toward deregulation in telecommunications, railroads, and trucking, and in paperwork reduction. Congress should be moving to eliminate the complex and injurious DOE price and allocation regulations rather than attempting to further restrict and complicate an already over-regulated petroleum marketing industry.

H.R. 6722 will go a long way toward accomplishing one thing: it may seriously endanger what little competition is left in wholesale and retail petroleum marketing.

It is a little like the farmer who put shackles on his plowhorse. Then, angry because the horse pulled so slowly, he shot the animal rather than simply take the shackles off. There is a danger that this bill will have the same effect on petroleum marketing. Legislation that fails to consider and redress over-regulation of the petroleum industry and all other private sector industries cannot be satisfactory and may well be counterproductive.

DAN MARRIOTT.

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